Supreme Court, U.S.
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No. 05-

IN THE

Supreme Court of the United States

THE LUMMI NATION, *et al.*,

Petitioners,

v.

SAMISH INDIAN TRIBE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In 1975, a group calling itself the Samish Tribe sought a determination that it was entitled to treaty fishing rights under certain Indian treaties with the United States. After full hearings before a Special Master and the District Court, the request was denied. The Ninth Circuit Court of Appeals affirmed after "careful scrutiny". Subsequently, the Samish sought recognition as an Indian tribe in administrative hearings and litigation. Petitioner Tribes were adverse to that process assuming that Samish recognition would be used by Samish in an attempt to impair petitioners' treaty rights. However, at least one Petitioner herein was denied participation in those proceedings on the grounds that the proceedings would *not* affect any claims to treaty rights. After finally receiving federal recognition, the Samish Tribe sought to reopen the final treaty rights judgment against them. The request was denied by the district court. The circuit court reversed holding that a change in Samish legal status (i.e. recognition) was sufficient to allow reopening the final treaty rights judgment under Rule 60(b).

1. Whether a change in the law constitutes "extraordinary circumstances" to allow reopening a 25-year-old final judgment pursuant to Fed. R. Civ. P. 60(b)(6)?

2. Whether relief is available under Fed. R. Civ. P. 60(b)(6) for the alleged misconduct of a party in a separate proceeding more than one year after the judgment in this case?

3. Whether barring Petitioners from participating in administrative proceedings and litigation on the grounds that those proceedings will not affect their treaty rights denies Petitioner's right to due process as a result of the Ninth Circuit decision below?

PARTIES TO THE PROCEEDING BELOW

Plaintiffs and Plaintiff-Intervenors

The United States of America

Puyallup Tribe of Indians

Confederated Tribes and Bands of the Yakama Indian Nation

Quileute Tribe

Hoh Tribe

Quinault Indian Nation

Jamestown, Lower Elwha & Port Gamble Bands of S'Klallam Tribes

Sauk-Suiattle Tribe

Lummi Nation

Skokomish Indian Tribe

Makah Tribe

Stillaguamish Tribe

Muckleshoot Tribe

Swinomish Indian Tribal Community

Nisqually Tribe

Tulalip Tribes

Nooksack Tribe

Upper Skagit Tribe

Defendant

State of Washington

Applicant for Intervention

Samish Indian Tribe

RULE 29.6 STATEMENT

Petitioners are federally recognized Indian Tribes, have no parents, and there are no publicly held companies that hold any stock of the petitioners.

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2. Whether post-judgment misconduct occurring many years ago in a separate proceeding is a basis for relief under Rule 60(b)(6). 13

   a. By granting a Rule 60(b) motion based on federal misconduct that occurred many years ago, the Ninth Circuit created a conflict with rulings from its sister Circuits that subsection (6) of Rule 60(b) cannot be used to expand subsections (1) through (3). 13

   b. By reopening a judgment based on misconduct without requiring Samish to prove that the misconduct prevented Samish from fully and fairly presenting its case to the District Court in 1979, the Ninth Circuit created a conflict with rulings from its sister Circuits that such proof is necessary. 17

   c. By re-opening a judgment based on misconduct that did not occur in the course of the proceeding to be re-opened, the Ninth Circuit has vastly expanded the scope of "misconduct" covered by Rule 60(b). 19

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